

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

**INTSEL STEEL DISTRIBUTORS, LLC,
(U. S. DOT No. 1058751)**

Petitioner

**Docket No. FMCSA-2009-0340
(Southern Service Center)**

DECISION ON PETITION FOR REVIEW OF SAFETY RATING

1. *Background*

This matter comes before the Federal Motor Carrier Safety Administration (FMCSA) on an October 13, 2009, petition by Intsel Steel Distributors, LLC (Petitioner) for administrative review of a conditional safety rating pursuant to 49 CFR 385.15. The conditional rating was assigned following a compliance review of Petitioner completed on or about September 29, 2009. It became effective on or about November 30, 2009.

The procedures for assigning a safety rating at the conclusion of a compliance review are set out in Appendix B to part 385. As pertinent, ratings are assigned for each of six factors, if applicable. The ratings for these individual factors then determine a carrier's overall safety rating according to a Safety Rating Table.¹

The ratings for factors one through five are assigned based on violations of acute regulations and patterns of noncompliance with critical regulations. The rating for factor six, recordable accident rate, is determined by the number of recordable crashes per

¹Appendix B to 49 CFR part 385, section III. A.(b).

million vehicle miles traveled by the carrier. An accident rate exceeding 1.5 crashes per million miles traveled will result in an unsatisfactory rating for the accident factor.²

Petitioner's conditional safety rating resulted from an unsatisfactory rating for factor six (accident).³ Petitioner contests its unsatisfactory rating for factor six, claiming that: (1) a February 5, 2009, accident was not a recordable accident because no injuries occurred that required treatment away from the accident scene and no vehicles were towed; and (2) a September 10, 2008, accident was not preventable.

2. Decision

The Appendix to part 385 states that the Agency will "consider preventability when a motor carrier contests a rating by presenting compelling evidence that a recordable rate is not a fair means of evaluating its accident factor."⁴ To satisfy this standard, a motor carrier must submit a signed police report containing the investigating officer's badge number and an insurance report—if one was generated—signed by the investigator. If no police report was prepared, an insurance investigation report alone is acceptable. All reports submitted, however, must demonstrate that the accident was not

² Appendix B to 49 CFR part 385, section II. B.(d). The unsatisfactory rating standard for urban carriers operating entirely within a radius of 100 miles is a rate exceeding 1.7 crashes per million miles traveled. The compliance review report indicates that Petitioner does not operate within a radius of 100 miles and is thus subject to the 1.5 crashes per million miles traveled standard. Although Petitioner did not include a copy of the compliance review report with its petition, a copy was obtained through FMCSA's Electronic Docket Management System and pertinent portions of the report have been placed in the docket.

³ The compliance review report calculated Petitioner's recordable accident rate as 2.22 crashes per million miles traveled, based on 1,350,000 miles operated and three recordable accidents during the 12-month period preceding the compliance review. Petitioner was rated conditional for rating factor two (driver) and satisfactory for all other applicable ratings factors.

⁴ Appendix B to 49 CFR part 385, section II. B.(e).

preventable by the motor carrier under the following standard, which is contained in Appendix B to part 385:

If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred and avoided it by taking steps within his/ her control which would not have risked causing another kind of mishap, the accident was preventable.⁵

Based on the petition and the compliance review report, Petitioner should have been charged with four recordable accidents rather than three, resulting in an accident rate of 2.96 crashes per million miles traveled. In addition to the two accidents challenged in the petition, Petitioner referenced a May 1, 2009, recordable accident, which it did not challenge. The fourth recordable accident occurred on September 25, 2008, when Petitioner's vehicle was involved in a fatal crash. The compliance review report cited Petitioner for not conducting post-accident alcohol testing following this crash. This accident was also not challenged by Petitioner.

The accident challenged by Petitioner as non-recordable occurred on February 5, 2009, in Jefferson Parish, Louisiana. According to the police report, Petitioner's vehicle struck a passenger vehicle in the rear shortly after a traffic signal changed from red to green. Petitioner's driver claimed that the passenger vehicle merged into his lane from the adjoining right turn lane and that he did not see the vehicle in time to avoid the collision. The police report indicated that the driver of the passenger vehicle initially stated that she was directly in front of Petitioner's vehicle when both vehicles were stopped at the red light. She then changed her statement to say she was in the adjoining lane, but merged into the lane occupied by Petitioner's vehicle and was struck by Petitioner's vehicle when the light changed to green. The police concluded that the

⁵ *Id.*

driver of the passenger vehicle was at fault and issued her a citation for careless operation of a motor vehicle. The police report indicated that she was transported to a medical facility (Ochsner's Westbank) for treatment and that her car was towed from the accident scene by Hebert's Wrecker Service.⁶ Although Petitioner disputed these statements, it presented no evidence rebutting them. Accordingly, Petitioner has not demonstrated that this accident was not recordable.

However, I find this accident to be not preventable. The diagram in the police report indicates that the driver of the passenger vehicle was in a right-turn only lane and Petitioner's driver could not have reasonably foreseen that another vehicle would illegally try to merge in front of him right after the traffic signal change from red to green. Under these circumstances, it would have been difficult to have taken necessary measures to avoid a collision.

The second accident challenged by Petitioner occurred in Houston, Texas on September 10, 2008. According to the police report, the driver of a passenger vehicle traveling behind Petitioner's vehicle lost control of his car after a tire blew out and he collided with the side of Petitioner's trailer. Petitioner's driver could not have foreseen this chain of events and taken evasive action. Consequently, I conclude that this accident was also not preventable.

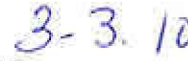
After removing two non-preventable accidents, Petitioner's accident rate is 1.48 crashes per million miles traveled based on two recordable accidents. Therefore, its accident factor rating is satisfactory, and its overall safety rating is satisfactory.

⁶ Inasmuch as the police report indicated the vehicle suffered minor damage to the rear bumper, it is possible the vehicle was towed because its driver was transported from the scene to receive medical treatment, not because of disabling damage.

Accordingly, *It Is Hereby Ordered*, the petition for administrative review filed by Instel Steel Distributors, LLC, is granted and its safety rating is upgraded to satisfactory.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration



Date

CERTIFICATE OF SERVICE

This is to certify that on this 4 day of March, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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